

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:	Atty. Docket No.:	007287.00033
<b>Dan Kikinis et al.</b>		
Serial No.: 09/783,932	Group Art Unit:	2174
Filed: February 14, 2001	Examiner:	Muhebbullah, Sajeda
For: Method and System for Inputting Time in a Video Environment Using Sliders	Confirmation No.:	1334

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

U.S. Patent and Trademark Office  
Customer Service Window, **Mail Stop AF**  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks.

Applicants previously filed a Notice of Appeal in this application on June 17, 2009, at which time the Notice of Appeal fee of \$540 was paid. A final board decision was not rendered on this prior appeal because prosecution on the case was reopened via the Non-final Office Action dated January 14, 2010. Accordingly, Applicants believe that a Notice of Appeal fee is not required with the present filing. *See* M.P.E.P § 1204.01. However, should the Office determine that any additional fees are required, the Commissioner is authorized to debit our Deposit Account No. 19-0733, accordingly.

### ***Remarks***

Having received and reviewed the Final Office Action dated August 12, 2010 (“Final Office Action”), Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

The pending rejections fail to address all the claim limitations, and exhibit clear factual and legal errors with respect to the cited references. The specific errors relied upon in this Pre-Appeal Brief Request for Review include the following:

1. The Office erred in its rejections of claims 1, 3, 7, and 9, under 35 U.S.C. §103(a) based on U.S. Patent No. 6,005,601 (“Ohkura”), in view of U.S. Patent No. 6,172,674 (“Etheredge”) with respect to the claim limitation, “display[ing] a plurality of programming content sliders ... wherein each of the plurality of sliders corresponds to a different aspect of programming content and wherein each of the plurality of sliders is associated with a different set of content-related characteristics of broadcast programs.” (Final Office Action, p. 2.) The Final Office Action alleges, at pp. 2-3, that a combination of Ohkura and Etheredge can be used to teach this feature. However, both Ohkura and Etheredge fail to teach the subject matter alleged in the Final Office Action, and neither of these references, alone or in combination, teaches these claim features.

#### **Ohkura**

The Final Office Action, page 7, states:

Per b) Ohkura clearly teaches a plurality of programming content sliders corresponding to different aspects of content (Fig.10, Fig.17; i.e. sliders 100X1 corresponds to time content and 100Z corresponds to genre content)
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This statement is incorrect for at least two reasons. First, as discussed in the Applicants’ Appeal Brief filed October 19, 2009, pages 9-10, the cited portions of Ohkura describe a user interface component in which a cursor may be moved up or down in response to a user manually depressing the up and down keys of a controller device. (Ohkura at 9:18-24.) Thus, FIGS. 10 and 17 of Ohkura do not disclose “programming content sliders” having “slide knobs,” as alleged by the Final Office Action. Indeed, the Ohkura reference never even mentions the terms “slide,” “slide knob,” “slider,” or “sliding,” nor does it describe any similar

concept for a user interface component. Since the Final Office Action, page 2, relies on Ohkura as allegedly teaching “programming content sliders” having slide knobs and corresponding to aspects of programming content, the rejections under 35 U.S.C. § 103(a) should be withdrawn for this reason alone.

Second, the Final Office Action is incorrect in characterizing the time/date cursor areas 100X1 and 100X2 of Ohkura, FIG. 10, as corresponding to aspects of programming content. In the above-reproduced section, the Final Office Action states that cursor area 100X1 corresponds to “time content.” This statement is nonsensical; the date and time that a program is broadcast has nothing to do with the programming content of the broadcast program. Therefore, even if the time/date cursor areas 100X1 and 100X2 were sliders, which they are not, they still would not be sliders that correspond to “aspects of programming content,” as recited in claims 1, 3, 7, and 9.

Similarly, the Final Office Action errs by alleging that the program title cursor area 100Y of Ohkura, FIG. 10, “corresponds to [an aspect] of programming content” and is “associated with [a] set of content-related characteristics of broadcast programs.” (Final Office Action, p. 2.) Moreover, the Office errs by alleging that Ohkura’s cursor area 100Y is both a “programming content slider,” and the area displaying the “set of one or more broadcast programs.” (See Final Office Action, p. 2, last line; p. 3, fourth line.) In claims 1, 3, 7, and 9, the “set of one or more broadcast programs” displayed in the EPG are based on the currently set values of “the programming content sliders,” therefore, it is logically impossible for these features to be taught by the exact same component, cursor area 100Y, as the Office alleges.

### **Etheredge**

Etheredge fails to cure the deficiencies in Ohkura for the reasons discussed in Applicants’ Amendment dated May 17, 2010, pages 10-11. Etheredge describes a slider 234 that allows users to increase or decrease the number of titles that will be presented in the EPG based on the user’s recorded preferences for different shows, topics, and the user’s regard for a critic’s criteria and an agent’s criteria. (Figs. 4 and 29; col. 20, line 27 to col. 21 line 37). Therefore, because Etheredge’s slider 234 only selects titles based on the user’s preference, it is not a programming content slider, as recited in claims 1, 3, 7, and 9. In fact, the Office Action never even alleges that Etheredge’s slider 234 is a “programming content”

slider that corresponds to an “aspect of programming content” and comprises “content-related characteristics of broadcast programs,” as required by claims 1, 3, 7, and 9. Rather, the Office Action only states that “[Etheredge’s] draggable slide knobs are used to filter program data.” (Office Action at 4).

Further, even assuming, without admitting, that Etheredge’s slider 234 is a programming content slider, Etheredge still would not teach or suggest “a plurality of programming content sliders” each corresponding to “a different aspect of programming content” and associated with “a different set of content-related characteristics,” as claimed. Etheredge discloses a single slider only, slider 234, which can be moved to increase or decrease the number of titles displayed in the EPG based on user preferences. (Figs. 4 and 29; col. 20, line 27 to col. 21 line 37). Thus, Etheredge does not disclose a plurality of programming content sliders, as claimed. Etheredge also does not teach or suggest any way of replicating its single slider 234, nor would there be any reason to do so in the context of Etheredge’s disclosure. Since Etheredge’s single slider 234 only increases or decreases the number of titles, multiple sliders in Etheredge would be unnecessary and confusing. Further, Etheredge’s single slider 234 is only based on user preferences. Thus, even if Etheredge taught multiple sliders, which it does not, Etheredge still would not teach or suggest multiple sliders corresponding to different aspects of programming content, as recited in claims 1, 3, 7, and 9.

Thus, since neither Ohkura, nor Etheredge, alone or in combination, teaches or suggests “display[ing] a plurality of programming content sliders, ... wherein each of the plurality of sliders corresponds to a different aspect of programming content and wherein each of the plurality of sliders is associated with a different set of content-related characteristics of broadcast programs,” claims 1, 3, 7, and 9 are not obvious over the cited references.

2. The Office erred in its rejections of claims 31 and 36 under 35 U.S.C. §103(a) based on Ohkura and Etheredge. As discussed in Applicants’ Amendment dated May 17, 2010, pages 12-13, Ohkura does not teach or suggest “a genre slider with a draggable genre slide knob,” as recited in claims 31 and 36.
3. The Office erred in its rejections of claims 32, 37, 40, and 41 under 35 U.S.C. §103(a) based on Ohkura in view of Etheredge and further in view of U.S. Patent No. 6,388,714 (“Schein”).

As discussed in Applicants' Amendment dated May 17, 2010, page 13, merely disclosing a method that allows users to perform text searches for actors and directors does not teach or suggest "an actor slider with a draggable actor slide knob," as recited in claims 32 and 37, or "a director slider with a draggable director slide knob," as recited in claims 40 and 41.

4. The Office erred in its rejections of claims 33, 34, 38, 39 under 35 U.S.C. §103(a) based on Ohkura, Etheredge, and Schein. As discussed in Applicants' Amendment dated May 17, 2010, page 13, the cited references are devoid of interaction between multiple programming content sliders, and do not teach or suggest modifying one programming content slider based on a changed value of another programming content slider, as claimed.

While Applicants believe the above points represent the clearest errors made by the Office, Applicants reserve the right to appeal on other bases and errors. In addition, Applicants believe the rejections of other claims not identified above are also based on one or more Office errors. Applicants will address such issues on appeal should the appeal of this case proceed after the Office's consideration of this paper.

### **CONCLUSION**

All issues having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the review panel believes the application is not in condition for allowance or there are any questions, the review panel is invited to contact the undersigned at (202) 824-3324.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated this 10<sup>th</sup> day of November, 2010

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